

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-77-C - ORDER NO. 2002-693
SEPTEMBER 30, 2002

IN RE: Application of Infonet Telecommunications Corp. for a Certificate of Public Convenience and Necessity to Provide Intrastate Resold Interexchange Telecommunications Services Within the State of South Carolina and for Alternative Regulation.) ORDER APPROVING
) CERTIFICATE FOR
) INTEREXCHANGE
) AUTHORITY AND
) MODIFIED
) ALTERNATIVE
) REGULATION

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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Infonet Telecommunications Corp. ("Infonet" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate resold interexchange telecommunications services within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services offerings under the identical regulatory treatment granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Infonet to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of Infonet's Application

and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on August 22, 2002, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Infonet was represented by Bonnie D. Shealy, Esquire. Adelaide D. Kline, Staff Attorney, represented the Commission Staff.

Michael Timmins, Executive Vice President of Global Business Development for Infonet Services Corporation ("ISC") Infonet Telecommunications Corporation's parent company, appeared and testified in support of the Application. As Executive Vice President of Global Business Development, Mr. Timmins is responsible for international corporate business development, international expansion and partnering, as well as managing the ISC investments in international affiliated joint venture companies. In this capacity, Mr. Timmins represents ISC as a member of the boards of directors of various affiliated companies around the world. He is also a member of the team at ISC that is assisting in the launch of Infonet, the Applicant in this proceeding. He further testified that he has been employed by Infonet's parent company for twenty-five years.

According to the testimony, Infonet is a wholly-owned subsidiary of ISC, a well established company that provides global communications services. Mr. Timmins testified that Infonet seeks authority to provide intrastate interexchange telecommunications services as a non-facilities-based switchless reseller to large business

end-users throughout the State of South Carolina. He said Infonet will provide large businesses in South Carolina with interexchange services tailored to meet their individual needs, and will provide such services at reasonable rates. He said that in order to best serve the needs of these large, sophisticated end-users, Infonet intends to provide its services to these multi-national corporations on an individual contract basis. The record reveals that Infonet proposes to offer Message Toll Service and inbound 8YY Service. Mr. Timmins further testified that Infonet engages with these multi-national corporations at the point of contract, normally in their country of origin. He used the Nestle Company as an example of the type of multi-national company that contracts with Infonet to provide various services here in the United States and abroad. He said Infonet has a \$100,000,000 contract with Nestle. Mr. Timmins offered that Infonet intends to utilize the services of AT&T Corp. as its underlying carrier in South Carolina and in the more than thirty other states in which Infonet intends to provide interexchange services.

As to the way Infonet intends to offer its services, Mr. Timmins testified that ISC designs, operates and manages the integrated communications infrastructure that multi-national corporations need to communicate freely and easily with their clients, prospects, employees and business partners. He said ISC provides a comprehensive portfolio of communications services – including access, transport, applications, and public Internet services – to provide the best global data communications solutions for more than 2,400 clients. The record reveals that ISC operates and manages points of presence in more than 180 countries and 3,000 cities worldwide.

The testimony at the hearing and in the record reveals that Infonet will provide large business interexchange services tailored to meet the individual needs of multinational corporations on an individual contract basis and will provide custom bills for its customers. Mr. Timmins said Infonet will utilize the billing services of its affiliate, Infonet Global Corporation, to invoice and collect payments from customers. He explained that as part of Infonet's standard billing process, it intends to bill its customers monthly and in arrears. He offered that Infonet will utilize the billing records provided by AT&T, its underlying carrier, and will bill customers with a single invoice for a single site in the state or country where Infonet signed that contract. He said Infonet will also be responsible for the billing and collections of that contract.

The record reveals that there are several levels of account responsibility at Infonet. According to Mr. Timmins, each individual contract has an account manager and account management team that is responsible for managing the relationship with the customer. On the operational side, he said that customers who encounter any technical or operational difficulties or problems would contact one of the Global Customer Assistance Centers (GCAC) through an 800 number (800-766-8737) that is manned twenty-four hours a day, seven days a week. He said several GCACs are located in the United States and that several others are located around the world. Specifically, he said GCACs offer toll-free customer service in Japan, the United States, Europe and Africa. He said customers may also contact the Senior Director of Customer Care at (310) 335-2600. Paul A. Galleberg, Secretary of Infonet, will be the Company's customer complaints and regulatory contact person. Infonet will operate exclusively as a switchless reseller.

Infonet will market its services via direct sales through its employees and independent sales agents.

According to the testimony, Infonet has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which authority is sought. Infonet's management team has a diverse background and each member of the management team has served Infonet's parent company, ISC, for many years, according to Mr. Timmins. He additionally stated that he has twenty-five years with Infonet and that the President and Chief Executive Officer, Joseph A. Collazo, has been with the Company for thirty-years. The record reveals that Akbar H. Firdosy, Treasurer, has served as Vice President and Chief Financial Officer of Infonet Telecommunications Corporation's parent company, Infonet Services Corporation, since 1995. From 1988 to 1995, Mr. Firdosy served as Controller for Infonet Services Corporation. Paul A. Galleberg, Secretary for Infonet Telecommunications Corporation has been Senior Vice President and has served as General Counsel and Secretary for Infonet Telecommunications Corporation's parent company, Infonet Services Corporation, since November 1, 2000. He previously was a partner at the international law firm Latham & Watkins, where he served as outside counsel to Infonet Services Corporation.

With regard to the financial qualifications, Mr. Timmins testified that Infonet, during its initial operations, will rely on the financial resources of its parent company, ISC. He said the parent company is a \$700 M company in terms of annual revenues. He explained that the Company's 10Q showed a small operating loss for last year. He said

the Company is financially secure with its balance sheet showing \$500 M in cash with debt of less than \$100M, giving the Company a cash position of over \$400M. He said the Company is cash flow positive.

Mr. Timmins indicates a desire for Infonet to be granted authority for alternative regulation of future provision of business services.

As to the marketing of its services, Mr. Timmins testified that Infonet will target large end-users in South Carolina which are typically multi-national companies that have either headquarters, remote offices or some form of operation in this country. He stated that BMW is a global client of Infonet already and uses Infonet's services in about 130 countries around the world. He testified that Infonet will market itself only as Infonet, that it does not intend to use any d/b/a's in South Carolina.

According to the Application and Timmins's testimony, the Company requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that Infonet can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in California. Mr. Timmins stated that the Company is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. Infonet also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA). Additionally, the Company requests a waiver of 26 S.C. Code Ann. Regs. 103-603 (1976) which requires regulated entities to file and get

Commission approval of contracts involving rates on an individual contract basis. Infonet asked to be regulated in a similar fashion as other companies in this regard.

According to Mr. Timmins, the Company has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, he said that Infonet has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, Infonet has not marketed its services in South Carolina prior to receiving certification. Mr. Timmins also testified that the Company has not received revenues from the completion of intrastate calls in South Carolina prior to receiving this certification. He said that Infonet has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. Finally, he testified that Infonet will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Infonet is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Infonet is a provider of long distance services and wishes to provide long distance services in South Carolina.

3. Infonet has the experience, capability, and financial resources to provide the services as described in its Application

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Infonet to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of Infonet which is consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under the Commission approved alternative regulation, the business service offerings of Infonet including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 96-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-

assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Infonet also.

3. The Commission adopts a rate design for Infonet for its provision of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. Infonet shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Infonet shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for

reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

5. If it has not already done so by the date of issuance of this Order, Infonet shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Infonet shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

6. Infonet is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. An end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Infonet shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Infonet

shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Infonet shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, Infonet shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3,

1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, Infonet requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants the Company's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters. GAAP may also be used for financial record keeping for the Company. As to the Company's requested waiver of 26 S.C. Code Ann. Regs. 103-603 (1976) regarding Commission approval of contracts involving rates on an individual contract basis, the Commission grants this waiver. Infonet is directed to provide notice of individual service contracts to the Commission on a periodic basis. Every six months, Infonet shall notify this Commission of its contracts with the Commission reserving the right to ask for further information and review of those contracts. This notice arrangement is similar treatment given to BellSouth for the same kind of individual contracts.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director

(SEAL)